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IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA,

CLERK, CIRCUIT COURT FAIRFAX, VA

v.

CRIMINAL NO. 102888 Hon. Jane Marum Roush

LEE BOYD MALVO,

Defendant

MOTION TO REQUIRE COMMONWEALTH TO PROVIDE RESUME AND BACKGROUND INFORMATION AS TO ANY MENTAL HEALTH EXPERT IT PROPOSES FOR APPOINTMENT BY THE COURT

COMES NOW the defendant, Lee Malvo, by his co-counsels, and states as follows:

- 1. The Commonwealth has requested that the defense give advance notice if it intends to use mental health testimony in mitigation should a penalty phase be reached.
- 2. Should the defense give notice and the Commonwealth thereafter seek an evaluation concerning the existence or absence of mitigating circumstances relating to the defendant's mental condition at the time of the offense, "the court shall appoint one or more qualified experts to perform such an evaluation." Virginia Code Section 19.2-264.3:1(F).
- 3. In order for the Court and the defendant to determine and comment upon whether any expert proposed by the Commonwealth is qualified for Court appointment, it will be necessary for the Commonwealth to provide a resume and background information on any expert nominated for Court appointment. The defense has no objection to the resume and background information being filed under seal.

- 4. This information should be provided to the Court and copied to counsel at least ten days prior to the Commonwealth's motion being heard. That procedure was followed by the defense for consideration of its proposed Court appointed mental health expert.
- 5. The ultimate decision as to who is appointed for the Commonwealth rests exclusively with the Court. The defendant, by counsel requests the opportunity to comment in court upon the credentials of any proposed expert, as did the Commonwealth on the defense proposals.

WHEREFORE the defendant, Lee Malvo, by counsel, respectfully moves this honorable Court to enter an Order requiring the Commonwealth at least ten days prior to hearing to submit to the Court with a copy to counsel the resume and background information on any candidate it proposes for appointment by the Court as a mental health expert pursuant to Virginia Code Section 19.2-264.3:1(F).

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CERTIFICATE OF SERVICE

We/I hereby certify that a true copy of the foregoing Motion/Memorandum was mailed,

first class mail to:

Robert F. Horan, Jr., Esquire Commonwealth's Attorney 4110 Chain Bridge Road Room 123 Fairfax, VA 22030

and the original was forwarded for filing to:

Hon. John T. Frey Clerk Fairfax County Circuit Court Fairfax County Judicial Center 4110 Chain Bridge Road Fairfax, VA 22030-4009

and a true copy was forwarded to the

Hon. Jane Marum Roush Judge Fairfax County Circuit Court Fairfax County Judicial Center 4110 Chain Bridge Road Fairfax, VA 22030-4009

this 13th day of <u>Augus</u> +, 2003.

Co-Counsel

Op-Counsel